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EXTRAORDINARY

PART II—Section 3

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No. 10] NEW DELHI, MONDAY, JANUARY 12, 1953

ELECTION COMMISSION, INDIA.

NOTIFICATION

New Delhi, the 12th January 1953

S.R.O. 114.—WHEREAS the election of Shri Bhagwan Din, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Kaisarganj North Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act (XLIII of 1951) by Shri Kanauji Lal Shukla, son of Shri Ram Adhar Shukla, Mohalla Khattri-pura, Bahraich City.

AND, WHEREAS, the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act. the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT GORAKHPUR

PRESENT:—Sri Brij Narain—*Chairman.*

Sri Brij Behari Lal. }
Sri Sukhdeo Prasad. } *Members.*

ELECTION PETITION NO. 251 OF 1952

Sri Kanauji Lal Shukla—*Petitioner.*

Vs.

1. Sri Bhagwan Din.
2. Sri Raja Rudra Pratap Narain Singh.
3. Sri Indar Partap Narain Singh.
4. Sri Lalji Lal.
5. Sri Rampal.
6. Sri Baikunath—*Respondents.*

JUDGMENT

This election petition has been brought under section 81 of the Representation of the People Act 1951 by Sri Kanauji Lal Shukla petitioner to have the election of Sri Bhagwan Din, respondent No. 1, from Kaisarganj (North) Constituency, district Bahraich, Uttar Pradesh, held on 22nd January 1952, declared wholly void on the allegations that on the date of scrutiny of the nomination papers the peti-

tioner's nomination was illegally and improperly refused by the Returning Officer on the ground that there had been failure to comply with the provisions of section 33 (6) of the Representation of the People Act (Act XLIII of 1951) inasmuch as the certified copy about the entry in the electoral roll filed by the petitioner was held not to have been issued and certified by the proper authority, i.e., the Electoral Registration Officer, even though the petitioner had filed a certified copy of the entry to prove his name in the electoral roll of Bahraich (West) Constituency, which entry was conclusive under section 36 of the Act. According to the petitioner, the Election Officer, Bahraich had directed the Copying Department of the Deputy Commissioner's Office, Bahraich, to issue promptly the certified copies of the electoral roll entries applied for and the Head Copyist who certified the copies as "true copies", acted on the authority and under the instructions of the Election Officer and so the certified copy of the entry relating to the petitioner's name should have been deemed to be conclusive. Sri Bhagwan Din, respondent No. 1, had, according to the petitioner, filed the entire electoral roll for Bahraich (West) Constituency along with his nomination paper and in this electoral roll the name of the petitioner is stated to have been duly entered but the Returning Officer in spite of the petitioner's pointing out to him the fact that the entries in his nomination paper could be compared with the entries in this electoral roll, did not accede to this request. The petitioner has further alleged that Sri Kamta Prasad Srivastava, Returning Officer, was a temporary Judicial Magistrate, Kalsarganj, whose term of office was being renewed from year to year and about 7 months back he was transferred to the executive side and was appointed S.D.O. of Tahsil Kalsarganj and on the 10th day of Moharram (12th October 1951), a mob had been fired at under his orders in Fakharpur, Tahsil Kalsarganj, district Bahraich, and his conduct in that connection was at the time of scrutiny of nomination papers under the consideration of the U.P. Government and so he improperly rejected the nomination paper of the present petitioner and also of Sri Basant Rai Bhandhari, who was opposing Hon'ble Thakur Hukam Singh, Minister for Revenue, practically on the same grounds. The petitioner has also alleged that one of the nomination papers filed by the respondent No. 1 bore a duly signed declaration meant for scheduled caste candidates and even though this fact was pointed out to the Returning Officer no consideration was paid to this objection and the respondent No. 1 was held to be duly nominated in spite of the fact that the other nomination papers of the respondent No. 1 were not accompanied by either the electoral roll of Bahraich (West) Constituency or a certified copy of the relevant entry thereof. The result of the election is stated to have been materially affected by the improper rejection of the petitioner's nomination as well as by the improper acceptance of the nomination papers of the respondent No. 1.

Sri Bhagwan Din, who is the main contesting respondent, has contended that the petitioner has no cause of action as his nomination paper was rightly rejected by the Returning Officer at the stage of scrutiny of the nomination papers as it failed to comply with the provisions of section 33 of the Representation of the People Act 1951 because the name of the petitioner was not in the electoral roll of the constituency for which he was seeking election and he had not produced any copy of the electoral roll in which his name was included, nor had he produced a copy of the relevant entry in the electoral roll such as could be considered to be certified. The copy produced by the petitioner could not, according to this respondent, be deemed to be a duly certified copy in view of rule 24 framed under the Representation of the People (Preparation of Electoral Rolls) Rules 1950, by which Electoral Registration Officer alone could issue certified copies of the electoral rolls which were kept in his custody. According to this respondent, the petitioner's plea that time should have been allowed to him for the purpose of rebuttal is wholly untenable as the petitioner had already got an opportunity to file a certified copy prior to the scrutiny. As the petitioner had filed along with his nomination paper a copy, which he thought was a certified copy and had relied upon that copy for the purpose of satisfying the Returning Officer after comparing the entries in his nomination paper with the copy filed by him, there could be no question, according to the respondent No. 1, of the Returning Officer comparing the entries in the nomination paper of the petitioner with the electoral roll filed by the respondent No. 1 or any other candidate. It has been denied that the petitioner tried to make any such comparison for the purpose of satisfying the Returning Officer at the time of the scrutiny. The respondent No. 1 has further denied the assertion of the petitioner that the Returning Officer was a party-fellow of this respondent or that he was under the influence of the Revenue Minister at the time of the scrutiny of the nomination papers. The respondent No. 1 has also contended that his nomination paper was not improperly accepted as the defect, if any, pointed out by the petitioner in his first nomination paper was not of any substantial character and once a duly filed nomination paper was accepted, it was not possible to reject the nomination of the respondent No. 1 be-

cause of any existing defect in any other subsequent nomination paper. Lastly it has been urged that the result of the election had not been materially affected by the rejection of the nomination paper of the petitioner.

The respondents Nos. 2, 3, 5 and 6 have not denied the allegations of facts made by the petitioner and it has been contended by them that in Bahraich district there were 3 Returning Officers for the Assembly Constituencies and one for the Parliamentary Constituency and before all these Returning Officers certified copies similar to the one filed by the petitioner were filed but none of these Officers except Sri Kamta Prasad Srivastava rejected the nomination papers of any candidate on this ground. It has further been contended that the respondent No. 1 being a Director of the Co-operative Bank, Bahraich and he being a Government contractor for the supply of Ayurvedic medicines was disqualified from seeking election. The respondent No. 4 did not file any written statement.

On the pleadings the following issues were framed, namely:—

1. Is the petitioner entitled to maintain the present election petition and did his name appear in the electoral roll of the Bahraich (West) Constituency, District Bahraich, at the time of his nomination?
2. Whether the nomination papers of the petitioner were improperly rejected under section 36(2)(d) of the Representation of the People Act? If so, was the result of the election not materially affected by the improper rejection of the petitioner's nomination papers?
3. Did the Returning Officer fail to exercise his judicial discretion in not giving an opportunity to the petitioner to controvert the objection of the respondent No. 1 as laid down in proviso to sub-section (3) of section 36 of the Representation of the People Act, and also in not looking into the electoral roll which was before him, or in not holding a summary inquiry? If so, with what effect?
4. Were the nomination papers of the respondent No. 1 improperly accepted by the Returning Officer and if so whether the result of the election has been materially affected thereby?
5. Whether the respondent No. 1 was duly nominated as a candidate?
6. Whether the respondent No. 1 was disqualified from seeking election?
7. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—The petitioner filed his nomination paper on 24th November, 1950, for nomination as a candidate for the Legislative Assembly, U.P., from Kaisarganj (North) Constituency, District Bahraich, *vide* his nomination papers Exs. 6 and 7 as well as Ex. A/2, and these documents show that he stated therein that his name was included in the electoral roll of Bahraich (West) Constituency at serial no. 4469 Mohalla Khataripura Ward No. 4 Bahraich Municipality. Sri Kanauj Lal petitioner has entered the witness-box and he has stated that he was a candidate for election for the State Legislative Assembly from the Kaisarganj (North) Constituency, but his name was entered in the electoral roll of the Bahraich (West) Constituency as a voter at serial No. 4469, and his name was also entered in the electoral roll of the Kaisarganj (North) Constituency, although he had filed along with his two nomination papers copies of the entries of his name in Bahraich (West) Constituency electoral roll. The petitioner has now filed a copy of the entry relating to his name in the electoral roll of Kaisarganj (North) Constituency also, *vide* Ex. 13. The statement of the petitioner further shows that when he filed his nomination papers along with the extracts of the entries relating to his name in the Bahraich (West) Constituency electoral roll, the entries made in these extracts were compared with the entries in the nomination papers on 24th November 1951 under section 33(5) of the Representation of the People Act 1951 and the Returning Officer was satisfied after comparison with regard to the accuracy of the entries made in these extracts and he did not demand any further copy of the electoral roll from the petitioner as laid down in sub-section 6 of section 33.

Sri Bhagwan Din, respondent No. 1 filed an objection, Ex.A/3, as against the nomination paper of the petitioner at the time of the scrutiny on 27th November 1951 and in this objection it was urged that the petitioner had failed to comply with the provisions of section 33 of the Representation of the People Act as his name was not in the electoral roll of the Constituency for which he was seeking election and he had not produced either a copy of the electoral roll in which his

name was included or a certified copy of the relevant entries in such roll, and the copy which was produced by the petitioner had not been issued by the Electoral Registration Officer (Tahsildar, Kaisarganj). This objection was presented at 3-10 P.M. on 27th November 1951, but as the petitioner wanted time to rebut this objection he was allowed time till 28th November 1951 for this purpose. It appears from the application of the petitioner dated 28th November, 1951, Ex. 11 that the petitioner sought to meet the objection, Ex. A/3, by urging that the objection raised by the respondent No. 1 against his nomination paper was not warranted by law and at any rate if there was a mistake it was a mistake for which the petitioner was not responsible and it was of a technical nature which should be overlooked as it was a mistake on the part of the Government officials. It was further urged that as the respondent No. 1 had filed the electoral roll of Bahraich (West) Constituency along with his nomination paper on 22nd November, 1951, the Returning Officer should have satisfied himself by looking into that electoral roll as the petitioner's name appeared in it. Lastly, it was contended that the petitioner's name also appeared in the north Kaisarganj Constituency in village Patwari Circle Sikdandarpur. Sri Rudra Pratap Narian Singh, respondent No. 2, also filed a similar application Ex. 12 in which a copy of the extract relating to his name duly attested by the Head Copyist, Dy. Commissioner's office, Bahraich was filed. As the Returning Officer did not appear to be favourable to the petitioner, the latter filed the application Ex. 10, in which it was mentioned that from the attitude adopted by the Returning Officer as well as from certain antecedents the petitioner apprehended that full justice would not be available to him at the hands of this Returning Officer and so it was prayed that the objections made against the petitioner be forwarded to the District Magistrate for disposal, or, in the alternative, some other Returning Officer be appointed to dispose of these objections. The Returning Officer, Sri Kamta Prasad Srivastava, then passed the order Ex. 2 on 28th November, 1951, by which he refused the nomination of Sri Kanauji Lal, petitioner on the ground that the certified copy filed by the petitioner was not issued by the proper authority, i.e., the Electoral Registration Officer, and so the petitioner failed to comply with the provisions of section 33 of the Representation of the People Act 1951.

Sri Kanauji Lal has stated on oath before this Tribunal that Sri B. P. Bhalla was the District Election Officer in Bahraich during the elections of 1951-52 and he was also the S. D. M. Nanpara, but there was no arrangement for issuing copies in the office of the Election Officer and so copies of the entries of the electoral roll were issued by the Copying Department of the Collectorate under the orders of the Election Officer, vide the order dated 12th November, 1951, Ex. 1, by which the Office Superintendent was instructed to direct the Head Copyist that the copy of the names of the electoral roll shall be issued the same day on which any one applied for it whether the application be urgent or ordinary and no serial would be observed in the case of the applications of issue of copy from the electoral rolls. The Head Copyist was also directed to depute an intelligent copyist for this purpose and fee for copying was laid down at Re. 1 for and upto 50 names, and this work was to have top priority. The application for obtaining copy of the entries at serial no. 4469 was given by Sri Kanauji Lal Shukla petitioner on 20th November 1951 to the Officer-in-charge, Copying Department, Collectorate, Bahraich, vide Ex A/4, and the extracts which appear to have been filed along with his nomination papers were obtained by him in pursuance of this or similar applications. The evidence of the petitioner further shows that no Copying Department was attached to the office of the Electoral Registration Officer and even when the petitioner applied for getting the copy Ex. 9, dated 4th December 1952 the Electoral Registration Officer had ordered that the copy should be prepared by the Copying Department of the Collectorate, although later on the copy Ex. 9 was delivered to the petitioner from the Tahsil, but even then the seal affixed on this copy is not of the Electoral Registration Officer but it is of the court of the Tahsildar and Magistrate 2nd class Bahraich.

The parties were given full opportunity to produce their entire oral and documentary evidence, but the respondent no. 1 did not enter the witness-box and he did not produce any witness to substantiate his contention that the Electoral Registration Officer had been issuing certified copies from before 12th November, 1951, or any certified copies had been issued by him prior to 27th or 28th November 1951. The Electoral Registration Officer or the Returning Officer were also not examined by the respondent no. 1 in this case, and so the statement of Sri Kanauji Lal petitioner remains absolutely un rebutted on the points which have been mentioned by me above and there seems to be no good reason for disbelieving his uncontradicted statement on these points.

It has been contended before us by the learned Advocate for the respondent no. 1 that the extracts from the electoral roll, containing entries regarding the

petitioner's name, which had been issued by the Head Copyist, Collectorate, Bahraich, could not be deemed to be duly certified copies of the electoral roll for the purposes of sections 33 and 36 of the Representation of the People Act 1951, and the Returning Officer was therefore justified in rejecting the nomination papers of the present petitioner. Reliance has been placed on rule 24 of the Representation of the People (Preparation of Electoral rolls) Rules 1950, and it has been urged on the basis of sub-rule 3 of rule 24 that such number of copies of the final electoral roll for each constituency as may be specified by the State Government shall be kept in the office of the Electoral Registration Officer of the constituency to which such roll relates, or at such other place as the State Government may by order specify until the publication of the next electoral roll for such constituency and as it has been provided in sub-rule 7 that every person having a right to inspect the election papers referred to in sub-rules 1, 2 and 3 and to get attested copies thereof on payment of such fees as may be fixed by the State Government, the Electoral Registration Officer alone could issue certified copies of the Electoral roll or extracts therefrom. According to this arguments, the use of the word "thereof" in sub-rule 7 of rule 24 means that certified copies can be issued only of the election papers referred to in sub-rules 1, 2 and 3 by the Electoral Registration Officer. We are unable to agree with this contention, for, in the first place, even under sub-rule 3 it has been clearly mentioned that a number of copies of the final electoral roll shall be kept in the office of the Electoral Registration Officer, or at such other place as the State Government may by order specify, and so there seems to be no force in the contention that simply because a limited number of copies of the final electoral roll are kept in the office of the Electoral Registration Officer, this Officer alone is competent to issue certified copies of the Electoral roll or extracts therefrom.

Sub-rule 4 of rule 24 runs as follows:—

"one complete copy of the final electoral roll for each constituency shall be kept for permanent deposit in such place as the State Government may by order specify."

Sub-rule 5 lays down that all copies of the final electoral roll for each constituency deposited under sub-rule 3, or the copy of the electoral roll for each constituency deposited under sub-rule 4 shall before deposit be duly authenticated by the Electoral Registration Officer of such constituency. This rule clearly provides that the complete copy mentioned in sub-rule 4 shall have the same authenticity as the number of copies which shall be kept in the office of the Electoral Registration Officer, and so there seems to be no good reason for believing that rule 24 prohibits the issuing of copies by the Election Officer or by the Copying Department of the Collectorate, when the Head Copyist of that Department was expressly ordered to issue copies by the Election Officer, *vide* the order Ex. 1, dated 12th November, 1951. As there is nothing on this record to show what are the places specified by the state Government for the deposit of the final electoral roll under the latter part of sub-rule 3, and sub-rule 7 merely provides for obtaining attested copies on payment of such fees as may be fixed by the State Government, it cannot be inferred from any provisions of rule 24 that it was intended by the Legislature that the Electoral Registration Officer alone should issue certified copies. Section 33, sub-section 6 provides that if at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the Constituency for which he is the Returning Officer, he shall for the purposes of sub-section 5 require the person presenting the nomination paper, to produce either a copy of the electoral roll in which the name of the candidate is included, or a certified copy of the relevant entries in such roll.

Section 36(7) provides that for the purposes of this section:—

- (a) the production of *any* certified copy of an entry made in the electoral roll of any Constituency shall be the conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or the seconder, as the case may be, is disqualified under sub-section 2 of section 33.

"Certified copy" is not defined either in the Act or in the Rules, and its definition has been given in section 76 of the Indian Evidence Act as follows:—

Every public officer, having the custody of the public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot

of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called "certified copies".

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

The petitioner made his application Ex. A/4 to the Officer-in-charge, Copying Department, Dy. Commissioner, Bahraich, who also happened to be the District Election Officer, and as the order Ex. 1 shows that the Head Copyist was ordered to issue copies from the electoral rolls promptly after receiving the prescribed fees, and copies were issued to the petitioner in due course, it can be presumed that the copies issued to the petitioner were regularly issued by the Head Copyist in discharge of his public duties and the electoral roll from which these copies were prepared must have been given to the Head Copyist by the proper authorities. The order Ex. 1 clearly suggests that the District Election Officer must have got in his custody either the copy of the final electoral roll meant for being kept as the permanent record, or any other copy which was duly authenticated by the Electoral Registration Officer under sub-rule (5) of rule 24, and so the Returning Officer was not justified in holding that the petitioner had failed to comply with the provisions of section 33 of the Representation of the People Act and the copies which were produced by him were not duly certified copies.

Section 33 (5) of the Representation of the People Act makes it clear that it is the duty of the Returning Officer to satisfy himself that the names and the electoral roll number of the candidate and his proposer and seconder as entered in the nomination papers are the same as those entered in the electoral roll, and if the Returning Officer finds that the name of the candidate is not registered in the electoral roll, he shall, for the purposes of section 5, require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included, or a certified copy of the relevant entries of such roll (sub-section 6). In the present case the Returning Officer did not direct the petitioner to file a copy attested by the Electoral Registration Officer presumably because there was no arrangement for issuing copies in that and the Returning Officer further failed to examine the electoral roll of the Kaisarganj (North) Constituency in which the name of the petitioner was duly entered, *vide* Ex. 13. The Returning Officer further failed to look to the electoral roll of the Baharaich (West) Constituency which was before him at the time of the scrutiny, as it had been filed by the respondent No. 1. As such we hold that the Returning Officer improperly rejected the nomination of the present petitioner in this case by means of the order Ex. 2, and there had been no failure on the part of the petitioner to comply with any of the provisions of section 33 or section 34. The issue, is, therefore, decided in the affirmative.

Issue No. 2.—We have already pointed out above that the Returning Officer was not justified in holding that the certified copies of the extracts from the electoral rolls filed by the petitioner along with his nomination papers were not duly certified because these copies had not been issued by the Electoral Registration Officer. We have shown above that there is un rebutted evidence on this record to show that all the authenticated copies of the final electoral roll are not kept in the custody of the Electoral Registration Officer who is merely a Tahsildar and as no arrangement for issuing copies was made in the office of the Electoral Registration Officer there was no justification for demanding copies of extracts from the electoral roll from the petitioner which might have been issued by the office of the Electoral Registration Officer as the petitioner would then be required to do something which it was simply not possible for him to do. *Lex Non Cogit Ad Impossibilia*—the law does not compel a man to do that which he cannot possibly perform—*Vide* Broome's Legal Maxims 8th Edition, page 201. As such it cannot be said that the petitioner had failed to comply with any of the provisions of section 33 or 34 of the Representation of the People Act as he had filed duly certified copies containing entries relating to his name in the electoral roll, *vide* I.L.R. 1944 Allahabad, p. 221, and the Returning Officer had duly satisfied himself about their accuracy on the date of the presentation of the nomination papers. It is thus clear that there was no failure on the part of the petitioner to comply with any of the provisions of section 33 and so his nomination was illegally rejected under section 36(2)(d) of the Representation of the People Act.

We now proceed to see whether the result of the election was not materially affected by the improper rejection of the petitioner's nomination papers. Sri Kanauj Lal petitioner is a practising lawyer at Baharaich and he has his house and

major portion of his property in Kaiserganj and so he can be reasonably expected to have some influence in this constituency. There is no doubt that in cross-examination he had to admit that he had stood for election in the District Board in the year 1946 from a constituency which formed part of Kaiserganj Tahsil and he was unsuccessful but from this fact alone it cannot be inferred that the petitioner could not secure appreciable number of votes in the constituency from which he proposed to contest the last elections in the year 1952. The petitioner has got a number of relations residing in this constituency and most of his clients also belong to this circle. It is only from the circumstances mentioned above that one can infer that if he had been allowed an opportunity to contest the election, the result of the election might have been different. It has been laid down in *Srijut Tara Pershad-vs-R. B. Devi Charan Baruah*, Jagat Narain's Election Petitions, Volume II, page 83 that the improper rejection of a nomination paper by the Returning Officer is a material irregularity, which affects the result of the election. In *E. Few-vs-C. E. Gibbon*, reported in Sen and Potdars Indian Election Cases, p. 66, it has been held that the Returning Officer has power to make summary inquiry in deciding objections as to nomination. While scrutinizing nominations, he performs a judicial function and should act judiciously. He should not mechanically reject a nomination and if any obscurity in nomination can be cleared up by summary inquiry he should do so. It has further been laid down in this case that if a nomination is improperly rejected the presumption is that the result of the election has been materially affected and the onus is on the respondent to rebut that presumption. In *Kalapraj-vs-Bishambhar Nath Tripathi* reported in Sen and Potdars Indian Election Cases, p. 106 it was held that rejection of nomination owing to non-production of a certified copy of the electoral roll to prove that proposers and seconders are registered voters is improper and in such cases the Returning Officer should make a summary inquiry. It was also held that improper rejection of nomination materially affects the result of the election. *Vide* also *S. R. Lewis-vs-C. E. Gibbon*, reported in Sen and Potdars Indian Election cases, p. 883, it has been held that in case of improper rejection of nomination paper a strong presumption arises that the result of the election has been materially affected and it is for the respondent to rebut the presumption. It was further held that clumsy evidence of respondent that he would have won if there was a contest and that of his proposer and seconder that they had more confidence in the respondent whom they considered a better man cannot be treated as rebuttal. The respondent No. 1 has not appeared in the witness-box before us nor has he examined his proposer and seconder and so it becomes clear that the result of the election was materially affected in this case by the improper rejection of the petitioner's nomination papers, *vide* *Shambhu Nath Mahanthi-vs-Govind Prasad Singh* reported in Sen and Potdars Indian Election Cases, p. 649. The first part of the issue is therefore decided in the affirmative and the latter part in the negative.

Issues Nos. 3 and 4.—There issues can be conveniently taken up together. We have shown above that the Returning Officer did give some time to the petitioner on the 27th November 1951 but as we have pointed out above that it was not possible for the petitioner to file a certified copy issued by the Electoral Registration Officer on the next day this granting of time could not be of any help. The Returning Officer failed to look to the electoral roll which was before him relating to Kaiserganj North Constituency and he also failed to look to the electoral roll of Bahraich West Constituency which had been filed by the respondent No. 1 before him and so it must be inferred that he failed to hold a summary inquiry as was mandatory under sub-section (2) and the proviso to sub-section (5) of section 36 with the result that the nomination of the present petitioner was improperly rejected and it materially affected the result of the election. We decide both these issues in the affirmative.

Issue No. 5.—It has been urged by the petitioner that as the respondent No. 1 signed a declaration which was meant for scheduled caste candidates in his nomination paper, his nomination paper should have been held to be invalid. We find from the nomination paper Ex. 3 that the respondent No. 1 merely signed this declaration but the unnecessary words had not been struck off and the blanks also had not been filled up and so it cannot be said that the respondent No. 1 actually relied on this declaration. Even if this signing be deemed to be an irregularity of a minor nature, it cannot be deemed to be any ground for rejecting the nomination paper as this defect was not of a substantial character as contemplated by sub-section (4) of section 36 of the Representation of the People Act which runs as follows:—

The returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

We, therefore, hold that the respondent No. 1 was duly nominated as a candidate and we decide this issue in the affirmative.

Issue No. 6.—The petitioner has produced a list of firms and pharmacies approved by the Government from which genuine medicines and drugs are to be purchased by Davakhana or Aushadhalayas under the control of the District Board, Municipal Board, Notified Area Committees and Rural Development Department, United Provinces, and it shows that Misra Bandhu Aushadhalaya, Bahraich, is one of the above firms for the supply of ayurvedic medicines to the District Board and Notified Area dispensaries. The petitioner has stated that the respondent No. 1 is the proprietor of this firm and so he should be deemed to be disqualified from seeking election under section 7(d) of the Representation of the People Act 1951. In our opinion the respondent No. 1 cannot be said to have any share or interest in a contract for the supply of goods etc. to or for the execution of any works or the performance of any service undertaken by the State Government simply because his firm was approved by the State Government out of 35 firms for supplying some drugs to different dispensaries in the Provinces.

The petitioner has further tried to show that Sri Bhagwan Din defdt. No. 1 was the Director, Cooperative Bank, Bahraich, and so he should have been deemed to be disqualified from seeking election under clause (c) of section 7 which runs as follows:—

- (e) If he is a director or managing agent of, or holds any office of profit under any co-operation in which the appropriate Government has any share or financial interest.

It has not been shown in this case that the State Government has any financial interest in the Cooperative Bank, Bahraich and so we hold that it has not been proved in this case that the respondent No. 1 was disqualified from seeking election and we decide this issue in the negative.

Issue No. 7.—In view of our findings above we declare that the petitioner is entitled to the relief that the election of Kaiserganj North Constituency held on 22nd January 1952 is wholly void. We allow the petitioner a sum of Rs. 200 as costs as against the respondent No. 1. The respondents will bear their own costs.

1. (Sd.) B. B. Lal.
2. (Sd.) Sukhdeo Prasad. } *Members.*

(Sd.) BRIJ NARAIN, *Chairman.*

6th January, 1953.

[No. 19/251/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.